

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VEEDER-ROOT FUELQUEST, LLC,

Plaintiff,

v.

ANGELA WISDOM, an individual, and
LEIGHTON O'BRIEN, INC., a
corporation,

Defendants.

Civil Action No. 2:21-cv-00352-RAJ
ORDER

I. INTRODUCTION

This matter comes before the Court on Plaintiff Veeder-Root Fuelquest LLC's ("Plaintiff" or "VRFQ") motion for expedited discovery and to preserve evidence. Dkt. # 11. Defendants Angela Wisdom and Leighton O'Brien, Inc.¹ ("LOI") (collectively

¹ Defendants contend that LOI is not Ms. Wisdom's employer and is therefore an improper party to this case. Dkt. # 20 at 1. Plaintiff responded in oral argument that it

“Defendants”) opposed this motion. Dkt. # 30. For the reasons below, the motion is
GRANTED in part.

II. BACKGROUND

The Court recounts the facts as set forth in its prior order. Dkt. # 31. Plaintiff is a fueling software and solutions provider in the retail and wholesale fueling industry. Dkt. # 1 ¶ 14. Ms. Wisdom was hired by Plaintiff as a Senior Director of Sales in the fall of 2017. *Id.* ¶ 20. In May of 2020, her role was expanded to include marketing responsibilities. *Id.* As a result of her responsibilities and duties, Plaintiff alleges that Ms. Wisdom had access to Plaintiff’s “confidential, proprietary, and trade secret information, ” which included, but was not limited to the following:

business strategy plans, sales strategies, pricing plans and information, the Company’s pipeline, customer information (including which customers had purchased which services) information regarding prospects (including details of anticipated deals, and how far along each prospective deal was), marketing strategies, development plans, strengths and weaknesses of certain Insite360 products and services, in-depth incentive and commission program information giving visibility into how the Company creates the necessary behaviors to drive growth, and more.

Id. ¶ 22.

When first hired, Ms. Wisdom signed a Nondisclosure and Assignment Agreement (“NDA”) on or about October 28, 2017. *Id.* ¶ 22. The NDA prohibited Ms. Wisdom from directly or indirectly using or disclosing to anyone outside the company any of Plaintiff’s trade secrets or confidential information, including customer lists, pricing, margins, and more. *Id.* ¶ 23. In mid-2019, Ms. Wisdom executed a new restrictive covenants agreement (“RCA”) with Plaintiff in exchange for, inter alia, an increase in salary and equity. *Id.* ¶ 24-26.

would amend its complaint. The Court will consider this motion with respect to the requested injunction against Ms. Wisdom and reiterates its instruction to amend the complaint to include the proper defendants.

1 On January 12, 2021, Ms. Wisdom informed Plaintiff that she was accepting a
2 position with Leighton O'Brien, Inc. ("LOI"), a direct competitor to Plaintiff, but
3 represented that her role was non-competitive with respect to the products she would be
4 selling and the territory in which she would be active. *Id.* ¶ 43. Plaintiff permitted Ms.
5 Wisdom to remain in her job for three weeks, until February 1, 2021, to facilitate off-
6 boarding and transition her responsibilities. *Id.* ¶ 47.

7 On February 1, 2021, LOI issued a press release dated February 2, 2021
8 announcing Ms. Wisdom's hire and describing her role as directly competitive with her
9 role with Plaintiff. *Id.* ¶ 48. On February 3, 2021, Plaintiff sent Ms. Wisdom a letter
10 reminding her of her continuing obligations to Plaintiff and requesting that she sign and
11 return a draft certification confirming that her role would not be competitive. *Id.* ¶ 51.
12 The following day, Plaintiff sent a copy of the letter to Reed Leighton, CEO of LOI. *Id.*
13 ¶ 52. Mr. Wisdom did not respond to Plaintiff's letter. *Id.* ¶ 57. The following week,
14 Plaintiff's General Manager and Vice President, Rachel Collins, emailed Ms. Wisdom
15 asking her to call her to discuss the matter. *Id.* ¶ 20, 57. Ms. Wisdom did not respond.
16 *Id.* ¶ 57.

17 On February 4, 2021, several days after her employment with Plaintiff ended, Ms.
18 Wisdom mailed her company-issued devices back to Plaintiff. *Id.* ¶ 70. Her RCA
19 required her to return the devices promptly upon termination of her employment and no
20 later than two business days after termination. *Id.* ¶ 69. After receiving the devices on
21 February 9, 2021, Plaintiff sent them to an external forensic examiner to conduct an
22 analysis of each device. *Id.* ¶ 70.

23 The forensic examination revealed that Ms. Wisdom had performed a factory reset
24 of her computer on February 3, 2021. *Id.* ¶ 71. According to the examiner, the analysis
25 also revealed "hundreds of documents had metadata altered within an extremely short
26 timeframe, suggesting that they were mass copied, deleted, or 'backed up' to another

1 device” on several occasions during Ms. Wisdom’s final weeks with Plaintiff. *Id.* ¶ 72.

2 The documents alleged included the following:

3 [C]onfidential information regarding hundreds of the Company’s customers,
4 including revenue received for said customers, contract terms, which products or
5 services the customers had purchased, and which [Plaintiff] sales executives were
6 assigned to those customers; compensation data for the Company’s account
7 executives, renewal executives, and other specialists, including compensation
8 structure, commissions, and quotas; information regarding the Company’s
9 territories; information regarding the [Plaintiff’s] pipeline, including specific
opportunities with prospects, which products were being pitched, stage of contract
negotiations, and anticipated contract value; and the [Plaintiff’s] growth goals for
2021.

10 *Id.* ¶ 75.

11 Ms. Wisdom had retained internal documents from Plaintiff and saved them on her
12 personal work computer, alleging that she had been asked to work after her employment
13 and that she needed to keep confidential company documents on her personal computer
14 for that purpose. *Id.* ¶ 77. Plaintiff disputes both of these statements. *Id.* ¶ 78.

15 Plaintiff’s outside counsel worked with counsel for Ms. Wisdom and LOI to try to
16 resolve the dispute. *Id.* ¶ 63. On February 24, 2021, without notice to Plaintiff, Ms.
17 Wisdom filed a declaratory judgment action in King County Superior Court naming
18 Plaintiff as a defendant. *Id.* ¶ 64. On March 4, 2021, Ms. Collins was personally served
19 with a copy of the lawsuit at her home, even though she was not a named party to the suit
20 nor was she an authorized agent for service. *Id.* ¶ 68.

21 On March 15, 2021, Plaintiff filed a complaint and motion for temporary
22 restraining order against Ms. Wisdom and LOI. Dkt. # 1, 3. On the same day, Plaintiff
23 filed the pending motion to expedite discovery and preserve evidence with a noting date
24 of March 26, 2021. Dkt. # 11. On March 16, 2021, Defendants filed a notice of intent to
25 oppose the motion. Dkt. # 16. The following day, Defendants filed their response, Dkt.
26 # 20, and the Court scheduled a hearing on the motion for temporary restraining order for

1 March 19, 2021. The parties subsequently filed a stipulated motion to extend the
 2 deadline for reply and move the hearing date, indicating that they were exploring “a
 3 potential resolution of their dispute without further court involvement.” Dkt. # 24 at 2.
 4 The Court granted the motion and rescheduled the hearing for March 24, 2021. On
 5 March 23, Plaintiff filed a reply indicating that the parties had not reached a resolution.
 6 Dkt. # 26. The Court heard oral argument on March 24, 2021.

7 On March 26, 2021, the Court denied Plaintiff’s motion for temporary restraining
 8 order. Dkt. # 31. The Court reserved consideration of Plaintiff’s motion for preliminary
 9 injunction and granted Defendants’ request for a hearing pursuant to Local Rule 7(d)(3).
 10 *Id.* at 31.

11 III. LEGAL STANDARD

12 A court may authorize expedited discovery before a Rule 26(f) conference upon a
 13 showing of good cause.² Fed. R. Civ. P. 26(d)(1); *Semitoool, Inc. v. Tokyo Electron Am.,*
 14 *Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002). Good cause exists “where the need for
 15 expedited discovery, in consideration of the administration of justice, outweighs the
 16 prejudice to the responding party.” *Id.* “The good cause standard may be satisfied where
 17 a party seeks a preliminary injunction . . . or where the moving party has asserted claims
 18 of infringement and unfair competition.” *Qwest Commc’ns Int’l, Inc. v. WorldQuest*
 19 *Networks, Inc.*, 213 F.R.D. 418, 419 (D. Colo. 2003) (internal citations omitted); *see also*
 20 *Caston v. Hoaglin*, No. CIV A 2:08-CV-200, 2009 WL 1687927, at *2 (S.D. Ohio June
 21 12, 2009) (holding that “[g]ood cause is often found in cases alleging infringement,
 22 unfair competition, or where evidence may be lost or destroyed with time”); *Ellsworth*
 23 *Assocs., Inc. v. United States*, 917 F. Supp. 841, 844 (D.D.C. 1996) (holding that

24 ² This Court declines to apply *Notaro* and instead applies the “good cause” standard in
 25 evaluating Plaintiff’s request for expedited discovery. *See Semitoool, Inc. v. Tokyo*
 26 *Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002).

1 “[e]xpedited discovery is particularly appropriate when a plaintiff seeks injunctive relief
 2 because of the expedited nature of injunctive proceedings”). However, a court need not
 3 automatically grant expedited discovery “merely because a party seeks a preliminary
 4 injunction.” *Am. LegalNet, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1066 (C.D. Cal. 2009).

5 When considering a request for expedited discovery in preparation for a
 6 preliminary injunction hearing, “it makes sense to examine the discovery request ... on
 7 the entirety of the record to date and the reasonableness of the request in light of all the
 8 surrounding circumstances.” *Am. LegalNet, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1067
 9 (C.D. Cal. 2009) (internal citation and quotations omitted). In determining the
 10 reasonableness of the request for expedited discovery, courts commonly consider the
 11 following factors: “(1) whether a preliminary injunction is pending; (2) the breadth of the
 12 discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden
 13 on the defendants to comply with the requests; and (5) how far in advance of the typical
 14 discovery process the request was made.” *Id.* (citations omitted).

15 IV. DISCUSSION

16 In the instant motion, Plaintiff requests leave to conduct expedited discovery in
 17 this matter and for an Order directing Defendants to preserve relevant evidence in their
 18 possession, custody, or control. Dkt. # 11 at 1-2. Plaintiff also requests that the Court
 19 order the District’s Model Tier-Two Protective Order shall govern expedited discovery.
 20 *Id.* at 2. Plaintiff seeks the following discovery on an expedited basis:

- 21 (1) The deposition of Wisdom, on an expedited basis, on topics concerning (i) her
 22 access to, retention of, use of, or dissemination of VRFQ’s confidential,
 23 proprietary, and/or trade secret information; (ii) her role with LOI, including
 24 but not limited to her responsibilities and territory, and access to customers;
 and (iii) other matters pertinent to VRFQ’s request for injunctive relief;
- 25 (2) The deposition of LOI’s CEO, Reed Leighton (“Leighton”), and a Rule
 26 30(b)(6) deposition of LOI, on an expedited basis, on topics concerning (i)
 LOI’s solicitation of Wisdom or other VRFQ employees into roles with LOI

1 similar to roles they held as VRFQ employees; (ii) Wisdom's actions on behalf
2 of LOI; and (iii) LOI's possession of VRFQ's confidential business
3 information;

4 (3) Requests for production of documents and interrogatories to Wisdom
5 concerning (i) her access to, retention of, use of, or dissemination of VRFQ's
6 confidential, proprietary, and/or trade secret information; (ii) her role with
7 LOI, including but not limited to her responsibilities and duties, territory, and
8 access to customers; and (iii) other matters pertinent to VRFQ's request for
9 injunctive relief, with responses due ten (10) days from service;

10 (4) Requests for production of documents and interrogatories to LOI concerning
11 (i) its solicitation of Wisdom or other VRFQ employees; (ii) Wisdom's
12 activities on behalf of LOI; and (iii) LOI's possession of VRFQ's confidential
13 business information, with responses due ten (10) days from service; and

14 (5) A forensic analysis of all computers, personal data devices, mobile phones, or
15 electronic storage devices owned by, assigned to, or otherwise in the
16 possession, custody or control of Wisdom at any time from November 1, 2020
17 to the present on which she conducted VRFQ business and/or stored VRFQ
18 information.

19 *Id.* at 1-2.

20 Plaintiff asserts that good cause exists to permit expedited discovery pursuant to
21 Rule 26(d)(1) because the information it seeks "is limited to what is necessary to ensure
22 its confidential information, trade secrets, and other legitimate business interests are
23 adequately protected." *Id.* at 6. Plaintiff further contends that its request is "eminently
24 reasonable."

25 Defendants argue that Plaintiff does not establish good cause for expedited
26 discovery, and that their discovery requests are neither "reasonable" nor "limited." Dkt.
29 at 3-4. Defendants allege that Plaintiff's demands on Defendants, including
numerous interrogatories, requests for production, and depositions within a short
timeframe are overly broad and burdensome. *Id.* at 4. As such, Defendants contend that
the second and fourth factors of the five-factor expedited discovery test weigh against
granting the motion. *Id.* at 5. Moreover, Defendants argue that Plaintiff's allegations of

1 harm are insufficient to establish good cause for expedited discovery and preliminary
2 injunction hearings are, by definition, based on an incomplete record. *Id.* Finally, they
3 argue that the timing of the motion so close to the FRCP 26(f) conference “provides little
4 to no benefit, much less a benefit outweighing the significant burden it places on
5 Defendants.” *Id.* at 5-6.

6 As a preliminary matter, the Court notes that Plaintiff’s motion was noted for
7 consideration by the Court only a few days prior to the FRCP 26(f) conference deadline
8 of March 31, 2021. Dkt. # 18. Although the parties are free to engage in discovery after
9 the Rule 26(f) conference without leave of the Court, Plaintiff’s pending motion is not
10 moot as it seeks an expedited timeline for responses to discovery requests, a Court order
11 for Defendants to preserve evidence, as well as a protective order governing expedited
12 requests.

13 The Court finds that the Plaintiff’s request for expedited discovery is reasonable
14 given the forensic analysis demonstrating irregular and suspicious activity with regard to
15 Ms. Wisdom’s use of Plaintiff’s confidential information. Plaintiff’s concerns about the
16 loss or destruction of confidential, proprietary, or trade secret information are valid. *See*
17 *Caston*, 2009 WL 1687927, at *2 (holding that good cause exists where “evidence may
18 be lost or destroyed with time”). The Court therefore grants Plaintiff’s request to order
19 Defendants to preserve evidence in their possession, custody, or control.

20 The Court also finds the discovery requests not to be overly burdensome but
21 modifies them slightly to provide Defendant additional time to meet the deadlines. The
22 Court agrees that, given the confidential nature of some of the discovery requests, a
23 protective order must be issued to ensure that information is adequately protected. The
24 Court finds that the District’s Model Tier-Two Protective Order is sufficient for the
25 period of expedited discovery and will consider alternatives as proposed by the parties
26 going forward.

V. CONCLUSION

For the foregoing reasons, the Court **ORDERS** as follows:

(1) VRFQ is granted leave to serve the interrogatories attached as Exhibits A and B to its Motion pursuant to Rule 33 of the Federal Rules of Civil Procedure, and Defendants shall produce written responses (subject to claims of privilege and any good faith objections) within fourteen (14) days of service of the requests by email;

(2) VRFQ is granted leave to serve the document requests attached as Exhibits C and D to its Motion pursuant to Rule 34 of the Federal Rules of Civil Procedure, and Defendants shall produce written responses and responsive documents (subject to claims of privilege and any good faith objections) within fourteen (14) days of service of the requests by email;

(3) VRFQ is granted leave to conduct depositions of Ms. Wisdom, a corporate representative of Defendant LOI and LOI's CEO, Reed Leighton pursuant to Rule 30 of the Federal Rules of Civil Procedure, on ten calendar days' notice;

(4) VRFQ shall be entitled to a forensic analysis of all computers, personal data devices, mobile phones, or electronic storage devices owned by, assigned to, or otherwise in the possession, custody or control of Wisdom at any time from November 1, 2020 to the present on which she conducted VRFQ business and/or stored VRFQ information, pursuant to a forensic analysis protocol regarding which the parties, through their counsel, shall meet and confer within three days of this Order;

(5) This District's Model Stipulated Protective Order shall govern expedited discovery in this case;

1 (6) Defendants shall immediately preserve all relevant evidence in their
2 possession, custody, or control (including, without limitation, all evidence residing
3 in their email and data storage accounts and on their mobile phones, computers,
4 and other devices), and Wisdom shall take steps to forensically preserve within
5 seven (7) calendar days any and all electronic devices, including but not limited to
6 any home and/or work computers, hard drives, flash drives, iPods, iPads, cell
7 phones, tablets, PDAs, and other external storage devices and/or cloud storage
8 services in their possession, custody, or control, that have or may have ever stored
9 VRFQ information or communications about VRFQ customers, products, or
10 services; and

11 (7) The parties are ordered to meet and confer and file a joint proposed briefing
12 schedule on the motion for preliminary injunction to be submitted no later than
13 April 7, 2021. The Court will reach out to the parties to identify a mutually
14 agreeable time for the preliminary injunction hearing.

15 SO ORDERED.

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17 DATED this 31st day of March, 2021.

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19 The Honorable Richard A. Jones
20 United States District Judge
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